

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 24, 2007

No. 06-10833
Conference Calendar

Charles R. Fulbruge III
Clerk

GILBERT J VELEZ

Plaintiff-Appellant

v.

TDC AGENCY'S REP AND ADMINISTRATORS; NFN ROSAS, Correctional
Officer III; NFN CHAMBERLANE, Lieutenant; NFN AYNES, Captain; NFN
GENTRY, Major

Defendants-Appellees

Appeals from the United States District Court
for the Northern District of Texas
USDC No. 5:06-CV-1

Before JOLLY, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Gilbert J. Velez, Texas prisoner # 1042987, appeals the dismissal of his 42 U.S.C. § 1983 complaint as frivolous under 28 U.S.C. § 1915. Because Velez concedes that he suffered no physical injury from the cold, he fails to state a claim for cruel and unusual punishment. See 42 U.S.C. § 1997e(e); *Jones v. Greninger*, 188 F.3d 322, 326 (5th Cir. 1999). Velez also fails to state a due

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

process claim given that he has no liberty interest in commissary and recreation privileges or early release on parole. See *Sandin v. Conner*, 515 U.S. 472, 484 (1995); *Moody v. Baker*, 857 F.2d 256, 257-58 (5th Cir. 1988). Velez has abandoned his legal mail claim by failing to brief it. See *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993). Velez fails to show that the district court erred when it dismissed his suit as frivolous. See *Berry v. Brady*, 192 F.3d 504, 507 (5th Cir. 1999).

Velez's appeal is without arguable merit and is frivolous. See *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is dismissed. See 5TH CIR. R. 42.2. Velez is cautioned that the dismissal of this appeal as frivolous, and the district court's dismissal of his complaint as frivolous, count as strikes under 28 U.S.C. § 1915(g). See *Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). He is cautioned that if he accumulates three strikes under § 1915(g), he will be unable to proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See § 1915(g).

APPEAL DISMISSED; SANCTION WARNING ISSUED.